

April 11, 2008

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UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Civil Action No. 08-1160

In Regard to the Matter of:

Opinion and Report

Bayside State Prison

of the

Litigation

Special Master

ROBERT FRIEDLAND

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * *

FRIDAY, APRIL 11, 2008

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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Transcript of proceedings in the above

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matter taken by Theresa O. Mastroianni, Certified

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Court Reporter, license number 30X100085700, and

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Notary Public of the State of New Jersey at the

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United States District Court House, One Garry Plaza,

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Camden, New Jersey, 08102, commencing at 9:30 AM.

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MASTROIANNI & FORMAROLI, INC.

Certified Court Reporting & Videoconferencing

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251 South White Horse Pike

Audubon, New Jersey 08106

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856-546-1100

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2 A P P E A R A N C E S:

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4 ROSELLI & GRTEGEL, PC

BY: MARK ROSELLI, ESQUIRE

5

- and -

BY: JAMES LAZZARO, ESQUIRE

6

1337 STATE HIGHWAY 33

HAMILTON SQUARE, NEW JERSEY 08690

7

609-586-2257

ATTORNEYS FOR THE DEFENDANTS

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A L S O P R E S E N T:

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11

LOUGHRY & LINDSAY, ESQUIRES

12

BY: PATRICIA GOOD

330 MARKET STREET

13

CAMDEN, NEW JERSEY 08102

856-968-9201

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ATTORNEYS FOR THE PLAINTIFFS

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1 JUDGE BISSELL: The first of the oral
2 opinions being delivered today pursuant to Local
3 Civil Rule 52.1 is that involving Robert Friedland in
4 case number 08-1160.

5 This opinion/report is being issued
6 pursuant to the directives of the Order of Reference
7 to a Special Master and the Special Master's
8 Agreement and the guiding principles of law which
9 underlie this decision to be applied to the facts
10 upon which it is based as set forth in the jury
11 instructions in the Walker and Mejias jury charges to
12 the extent applicable to the allegations of Mr.
13 Friedland.

14 As finalized after review under Local
15 Civil Rule 52.1, this transcript will constitute the
16 written report required under paragraph seven of the
17 Order of Reference to a Special Master.

18 Robert Friedland was housed in Trailer
19 Number Two at the times pertinent to the lockdown.
20 He describes two incidents of encounters with SOG
21 which he alleges are actionable here as Eighth
22 Amendment violations. His testimony essentially on
23 direct examination as to those incidents appears at
24 the transcript of March 27th, 2008 at pages 11
25 through 15 and at pages 18 through 26. I incorporate

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1 that testimony by reference here rather than reciting
2 it at length. I find it, however, incredible for
3 several reasons which I will develop hereafter.

4 Several statements before me and other
5 facts of record so adversely affect Mr. Friedland's
6 credibility that I find he has not proven either the
7 alleged assaultive conduct or the consequential
8 injuries, particularly the alleged broken toe from
9 the first incident and the alleged broken rib from
10 the second.

11 He stated, and I'm summarizing, that
12 his toe was broken by a SOG who stamped on his foot
13 with his boot. And he presented that toe on his left
14 foot, as I recall, for me to examine. He stated
15 initially that it was the middle toe. It turns out
16 it was the toe directly adjacent to the big toe. I
17 don't consider that discrepancy significant and there
18 is no doubt that that toe is considerably deformed
19 and, in fact, angled as he testified.

20 However, all the evidence in this case
21 is that the SOG officers were big men. I don't think
22 it's an impermissible inference to assume that big
23 men have big feet and wear big boots. The thought
24 that having his foot stomped upon by the boot of a
25 SOG officer and an injury isolated to one toe with no

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1 affect on those adjacent to it is just not credible.
2 I don't think that's fatal speculation at all. And
3 accordingly, while there is no doubt that at some
4 point and in some way he has suffered a broken and
5 permanently injured toe, he failed to prove that it
6 was from this incident.

7 He talks also of a broken rib and then
8 described in some detail that it was broken to be
9 reset. That medical event in itself is not an
10 entirely unusual one. There probably isn't any of us
11 here who hasn't had a broken bone that didn't set
12 well and had to be reset so that it would.

13 However, his testimony that this rib
14 was reset without anesthesia, even a local, just
15 broken on the spot and then reset on the spot with no
16 anesthesia is also not credible. The only thing I
17 can determine from that, as I said, incredible
18 explanation is that somehow or other he was looking
19 to enhance both the severity of his injuries and his
20 consequential pain and suffering for our benefit
21 here.

22 There are other aspects of his
23 recounting of these incidents that are not credible
24 either. He claims that upon being accosted by the
25 SOG officers, as I recall it, on the first occasion

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1 or the record might reveal on both, that there were
2 references to the fact that he was suing the
3 Department of Corrections. "You're the guy that sues
4 the DOC, is it worth it?"

5 However, while I can understand that
6 this is some sort of an effort on Mr. Friedland's
7 part to gain a link to contemporaneous events that
8 might support in logic the attacks upon him, it has
9 no traction with me. The dispute that he had with
10 the Department of Corrections which was necessarily a
11 named defendant was a parole dispute. It had nothing
12 to do with the conduct of line corrections officers.
13 I'll assume for the moment that for one reason or
14 another the SOG officers might have known of that,
15 but frankly it had nothing to do and no significant
16 impact on any line or even supervisory corrections
17 officers.

18 As I've said frequently in opinions
19 here and will continue to do, a fact finder, like we
20 tell our jurors, has to exercise some common sense
21 and make a determination guided by common sense as
22 well as the record as to what actually occurred here.
23 There is nothing credible in those remarks attributed
24 to SOG officers.

25 Mr. Friedland also testified about

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1 repeated meetings with Administrator Faunce and Mr.
2 Albino in which they were endeavoring to force him to
3 release statements that he had received from other
4 prisoners and saying that we'll basically fast track
5 you out of the system if those statements are
6 released to us. At one point he said also that he
7 refused to do so and basically "took the fall" for
8 others.

9 First, I assessed Mr. Friedland,
10 watched his demeanor and considered the record
11 developed in connection with the crimes of dishonesty
12 of which he was convicted, including bilking fellow
13 investors in real estate syndicates, as well as his
14 other testimony. Mr. Friedland is not one who takes
15 a fall for anybody. And for him, essentially, to
16 imply here that he subjected himself to months and
17 months and months of ad-seq, including at other
18 institutions, because he remained silent and refused
19 to reveal statements from fellow prisoners is equally
20 incredible.

21 Furthermore, Mr. Albino, whom I did
22 find to be a credible witness here, testified that
23 neither in the course of his normal duties nor
24 particularly with Mr. Friedland did he have repeated
25 meetings in connection with the events ascribed to

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1 him. He further testified, and I find quite
2 accurately and logically, that he had no need for
3 these statements. Litigation had ensued, attorneys
4 had been retained and were conducting interviews at
5 the prison, and the accessibility of those documents
6 through discovery, if necessary, was, at least in his
7 view, present. So under those circumstances, once
8 again, Mr. Friedland's testimony is just not worthy
9 of belief.

10 Although I did not permit its
11 exploration in detail nor allow documentary evidence
12 to come in in connection with the charges which did
13 lead Mr. Friedland to ad-seg, nevertheless, the fact
14 of such charges was tendered as a credible
15 explanation as to why he found himself in that
16 status.

17 For all of the considerations and
18 determinations recited above, I find Mr. Friedland
19 has failed to establish his claims here of any Eighth
20 Amendment violations whatsoever.

21 Finally, although not every item of
22 evidence has been discussed in this opinion/report,
23 all evidence presented to the Special Master was
24 reviewed and considered.

25 For the reasons set forth above, I

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1 recommend in this report that the district court
2 enter an order and judgment of no cause for action
3 with regard to Robert Friedland.

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1 C E R T I F I C A T E

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3 I, Theresa O. Mastroianni, a Notary Public and
4 Certified Shorthand Reporter of the State of New
5 Jersey, do hereby certify that the foregoing is a
6 true and accurate transcript of the testimony as
7 taken stenographically by and before me at the time,
8 place, and on the date hereinbefore set forth.

9 I DO FURTHER CERTIFY that I am neither a
10 relative nor employee nor attorney nor counsel of any
11 of the parties to this action, and that I am neither
12 a relative nor employee of such attorney or counsel,
13 and that I am not financially interested in the
14 action.

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Theresa O. Mastroianni, C.S.R.

20 Notary Public, State of New Jersey

My Commission Expires May 5, 2010

21 Certificate No. XI0857

Date: April 13, 2008

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